

REMARKS

Applicants have carefully reviewed the Office Action mailed on February 11, 2004. Applicants respectfully traverse all objections, rejections, and assertions made by the Examiner. With this amendment, claims 96 and 100 are amended. Claims 96-100 and 102 remain pending.

As a preliminary matter, Applicants have still not received an initialed and dated copy of the Form PTO-1449 that had been filed with the Information Disclosure Statement on July 23, 2001. Applicants respectfully request that the Examiner return an initialed and dated copy of this Form PTO-1449 with the next communication from the Office.

Claims 96, 97 and 102 are rejected under the judicially created doctrine of obviousness-type double patenting as unpatentable over claims 1-5, 14-15, 19-22 and 25 of U.S. Patent No. 5,891,112. The pending claims share an effective filing date with the cited reference. Therefore, a Terminal Disclaimer means little with respect to patent term in this case. None-the-less, an appropriate Terminal Disclaimer is filed herewith, thereby rendering the rejection moot. However, Applicants do not concede the correctness of the rejection.

Claims 96-99 and 102 are rejected under 35 U.S.C. §102(b) as being anticipated by Truckai in U.S. Patent No. 5,019,057. Amended claim 96 now recites that the tubular member includes a first section having a first outside diameter and a second section having a second outside diameter different from the first. This feature can be seen, for example, in Figure 3 where catheter section 200 includes a larger diameter portion 210 and a smaller diameter portion 212. The Truckai device appears to have a constant outer diameter and nothing in the Truckai disclosure appears to teach this structural limitation. Accordingly, Truckai cannot anticipate amended claim 96. Therefore, Applicants respectfully submit that claim 96 is now in condition for allowance. Because claims 97-99 and 102 depend from claim 96, they are also allowable based on this amendment and because they add significant elements to distinguish them further from the prior art.

Claim 100 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 100 has been rewritten as suggested. Applicants respectfully submit that this amendment overcomes the objection.

Appl. No. 09/648,378
Amdt. dated April 30, 2004
Reply to Office Action of February 11, 2004

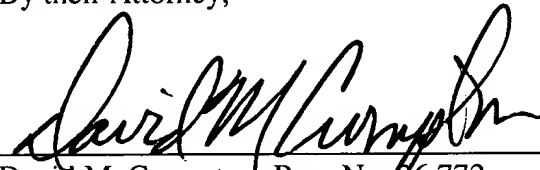
Reexamination and reconsideration are respectfully requested. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

Gene Samson et al.

By their Attorney,

Date: 4/30/04


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